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Remarks

Claims 1-11, 14-16, 23-28, 31-33, 37 and 39 are pending. Claims 12, 13, 17-22, 29-30, 34-36 and 38 are withdrawn. Claims 1-5, 7-11, 14, 33 and 39 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,513,835 ('835 Patent). Claim 37 is allowed. Claims 6, 15-16, 23-28, and 31-32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the rejected base claim and any intervening claims.

The '835 Patent is Not Prior Art

The Examiner finds that the '835 patent:

has a common inventor and/or assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

As indicated in the attached Declaration of Scott David Thomas under 37 C.F.R. §1.132, and Exhibits A-C, all of which are hereby incorporated by reference, any invention disclosed but not claimed in the '835 Patent was derived from Scott David Thomas, the sole inventor of the present application, and is thus not an invention "by another". Exhibit A is a Declaration executed by Scott David Thomas on July 18, 2003 and filed with the United States Patent and Trademark Office on August 2, 2003 stating that Scott David Thomas is the sole inventor of the subject matter claimed in the present Application. Exhibit B is a Declaration executed by Scott David Thomas on April 19, 2001 stating that Scott David Thomas is the sole inventor of the subject matter claimed in United States Patent No. 6,513,835, resulting from United States Patent Application Serial No. 09/817,784. Exhibit C is a Transmittal Letter with which the Declaration

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of Exhibit B was enclosed, including a certification under 37 C.F.R. 1.8 indicating that the Transmittal Letter of Exhibit C and the Declaration of Exhibit B were deposited with the United States Postal Service as first class mail in an envelope addresses to Commissioner of Patents, Washington DC 20231 on August 14, 2001. The attached Declaration under 37 C.F.R. §1.132 and Exhibits A-C prove that the '835 Patent is not prior art under Section 102(e). At least for this reason, the rejection of claims 1-5, 7-11, 14, 33 and 39 is overcome.

The '835 Patent Does Not Disclose the Claimed Invention

For a claim to be properly rejected as anticipated under 35 U.S.C. §102, every element and limitation found in the rejected claim must be found in the Section 102 reference cited by the Examiner. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."

Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987), See MPEP §2131.

Claim 1 requires in part:

a fill tube in fluid communication with the inflator to port the inflation gas from the inflator, and an air bag in fluid communication with the fill tube to receive the inflation gas from the fill tube...

The Examiner finds that the '835 Patent discloses:

a fill tube 56 in fluid communication with the inflator, and an air bag cushion 12 in fluid communication with the fill tube [.]

The component 56 relied upon by the Examiner as the fill tube required by claim 1 is shown in Figure 2A of the '835 Patent and is actually:

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a diffuser 56 [is] mounted adjacent the gas emission ports 54 for placing a wall 58 between the ports 54 and an air bag 60. In this manner gas can be dispersably emitted through a hole 62 in the wall 58. As shown, the diffuser 56 includes a hole 64 for receiving the inflator mounted stud 48 such that the diffuser 56 may be secured between the housing 34 and the canister 44. The wall 58 of the diffuser 56 abuts a seal 66 against the canister 44.

Thus, diffuser 56 is not a tube, but is instead a wall 58 with a hole 62. Thus, the diffuser 56 is not a "fill tube" as required by claim 1. Because the '835 Patent discloses no fill tube, the dual depth mechanism 36 referred to by the Examiner does not have a "fill tube receiving portion" as required by claim 39. For at least these reason as well, the rejection of independent claims 1 and 39, as well as claims 2-11, 14-16, 23-28, and 31-33 which depend from claim 1, is believed to be overcome.

CONCLUSION

In light of the above remarks and the attached Declaration and Exhibits, the rejection of claims 1-5, 7-11, 14, 33 and 39 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,513,835 ('835 Patent) is believed to be overcome. Accordingly, claims 1-11, 14-16, 23-28, 31-33 and 39 are believed to be allowable along with allowed claim 37, which action is hereby respectfully requested.

Respectfully submitted,



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